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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,245	11/10/2003	Yuan-Tsong Chen	16743-003001 / 12A-920716	3196
26181	7590	04/23/2007	EXAMINER	
FISH & RICHARDSON P.C. PO BOX 1022 MINNEAPOLIS, MN 55440-1022			KAPUSHOC, STEPHEN THOMAS	
		ART UNIT	PAPER NUMBER	
		1634		
		MAIL DATE	DELIVERY MODE	
		04/23/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action Before the Filing of an Appeal Brief</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/705,245 Examiner Stephen Kapushoc	CHEN ET AL. Art Unit 1634

**—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —**

THE REPLY FILED 21 March 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a)  The period for reply expires 3 months from the mailing date of the final rejection.
- b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2.  The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

- (a)  They raise new issues that would require further consideration and/or search (see NOTE below);
- (b)  They raise the issue of new matter (see NOTE below);
- (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

- 4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
- 5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
- 6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
- 7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

- 8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
- 9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

- 10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

- 11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
  - See Continuation Sheet.
- 12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_
- 13.  Other: \_\_\_\_\_.

Continuation of 3. NOTE: The proposed New Claim 26 is drawn to a method of assessing risk in a patient that is 'a Mongoloid or a descendent of a Mongoloid' where the previously presented claims did not require any such limitation. As such the claims would require further search and consideration of the art at least to determine any possible concerns regarding the enablement of the claimed method with respect to the requirements of 35 USC 112 1st ¶. Furthermore, the specification of the instant application does not particularly mention any 'Mongoloid' population, and as such the proposed new claim would require consideration under 35 USC 1st ¶ to determine whether or not the claim is considered new matter. .

Continuation of 11. does NOT place the application in condition for allowance because: Applicants remarks of 03/21/2007 drawn to the applicability of the HLA-B\*1502 allele for use as an indicator of sensitivity to carbamazepine have been addressed in the 'Response to Remarks' presented in the Final Office Action of 12/18/2006. The Examiner has maintained that the instant application provides no evidence of any causal relationship between the HLA-B\*1502 allele and development of an adverse reaction to carbamazepine treatment, while the cited art provides teachings of the unpredictability with regard to whether or not the marker is predictive in any population. It is noted that the proposed amended claims submitted 03/21/2007 have not been entered, as addressed earlier in this Advisory Action, and as such the Remarks directed to New Claim 26 (p.10 of Remarks) are moot.

BJ FORMAN, PH.D.  
PRIMARY EXAMINER